

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRADLEY VIOLA

Claimant

VS.

HAY & FORAGE INDUSTRIES

Respondent

Self-insured

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Docket No. 199,286

ORDER

Administrative Law Judge George R. Robertson denied claimant's request for preliminary benefits in a Preliminary Hearing Order dated June 2, 1995. From that Order, claimant appeals to the Appeals Board.

ISSUES

Claimant requests Appeals Board review of the following issues:

- (1) Whether claimant suffered a personal injury by accident that arose out of and in the course of his employment with the respondent on January 3, 1995 through January 11, 1995; and
- (2) Whether claimant gave timely notice of the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review this Preliminary Hearing Order as both of the issues raised by the claimant are set forth in K.S.A. 44-534a(a)(2).

The Administrative Law Judge denied claimant benefits finding that the claimant had injured his back while employed by the respondent on December 20, 1994, but had failed to give the respondent notice of the accident within ten (10) days as required by K.S.A. 44-520. He also found that the claimant had failed to prove he had suffered a series of micro-traumas that injured his back while performing work activities for the respondent. The claimant has the burden to establish his right to compensation and to prove the various conditions on which his right depends by a preponderance of the credible evidence. See

K.S.A. 44-501(a) and K.S.A. 44-508(g). The Appeals Board has carefully reviewed the preliminary hearing record and finds for the reasons specifically set forth below that the claimant has proved, through his testimony and the medical records admitted herein, that claimant's repetitive work activities from January 3, 1995 through January 11, 1995 aggravated his pre-existing low back condition. The Appeals Board also finds that notice of the accidental injury was given by the claimant to the respondent on January 11, 1995, which satisfies the notice requirement of K.S.A. 44-520.

Claimant was employed by the respondent as a shear operator which involved repetitive lifting, pulling, bending and twisting. Claimant first felt a pull in his back sometime in December 1994. He had previous low back problems in 1988 which resulted in surgery at the L4 region. Claimant did not work from December 23, 1994 until January 3, 1995 due to the respondent being shut down for Christmas vacation. As a result of this inactivity, claimant's back symptoms improved. However, after the claimant returned to his regular work activities on January 3, 1995, his low back pain worsened and he finally notified the respondent on January 11, 1995 of his back problems. Respondent sent the claimant to the company doctor who diagnosed prostatitis and treated claimant with antibiotics. Claimant returned to work but his back remained symptomatic.

Because his symptoms did not improve, claimant sought medical treatment on his own with Dr. David L. Buller. He first saw Dr. Buller on February 3, 1995. Dr. Buller examined the claimant and concluded that claimant had a back strain with lumbar neuroradiculopathy. Dr. Buller opined that claimant's back symptoms may be just tendinitis caused by his work activities but he suspected a possible ruptured disc because of his history of a previous back injury. Dr. Buller recommended that the claimant be referred to either an orthopedic or neurosurgeon for further evaluation.

Respondent referred the claimant for a neurosurgical evaluation to Paul A. Stein, M.D. Claimant was first examined by Dr. Stein on March 17, 1995. After taking a history, Dr. Stein diagnosed lumbar strain versus lumbar disc disease with nerve root irritation bilaterally. Dr. Stein noted that claimant's work involved a lot of repetitious lifting, pulling and bending. He then concluded, "I think that certainly the kind of work he does is likely to be related to his symptomatology and to cause this aggravation." An MRI was completed on April 5, 1995, that showed post-surgical changes at L4-5 with some mild disc bulge on the left. Conservative treatment was prescribed in the form of outpatient physical therapy and an epidural steroid injection. This treatment recommendation was not undertaken because respondent, at that time, denied that claimant was entitled to medical treatment for his low back condition. The Appeals Board finds claimant did suffer a work-related injury while employed by the respondent and that claimant gave respondent timely notice of such injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge George R. Robertson dated June 2, 1995, is reversed. The Appeals Board further orders this case remanded to Administrative Law Judge George R. Robertson for appropriate findings and orders based on the evidence contained in the preliminary hearing proceedings in regard to claimant's request for payment of past medical expenses, future medical treatment and temporary total disability benefits.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, Kansas
Larry Shoaf, Wichita, Kansas
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director